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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,250	02/18/2004	Floyd Backes	160-034	3137
34845	7590	09/30/2005		EXAMINER
STEUBING AND MCGUINNESS & MANARAS LLP 125 NAGOG PARK ACTON, MA 01720			PHILPOTT, JUSTIN M	
			ART UNIT	PAPER NUMBER
			2665	

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/781,250	BACKES ET AL.	
Examiner	Art Unit		
Justin M. Philpott	2665		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 26 May 2005. .

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-5 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-5 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 18 February 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date Oct04, Apr05, May05.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## **DETAILED ACTION**

### *Specification*

1. The disclosure is objected to because of the following informalities: the brief description does not include figures 8A, 8B, 18A, 18B, 33A and 33B. Accordingly, “Figure 8” (page 3) should be replaced with “Figures 8A and 8B”; “Figure 18” (page 4) should be replaced with “Figures 18A and 18B”; and “Figure 33” (page 6) should be replaced with “Figures 33A and 33B”. Appropriate correction is required.

### *Claim Objections*

2. Claims 1, 4 and 5 are objected to because of the following informalities:  
Regarding claim 1, “logic for associating with a current access point” (claim 1, line 5) should be changed to “logic for associating the wireless device with a current access point”; “point; logic” (claim 1, lines 7-8) should be changed to “point; and logic”; and “said access point” (claim 1, line 10) should be changed to “said another access point”.

Regarding claim 4, “less than “x”; Ascertaining” (claim 4, lines 6-7) should be changed to “less than “x”; and ascertaining”; and “samples;” (claim 4, line 4) should be changed to “samples, wherein “x” is an integer;” and “is less than” (claim 4, line 6) should be changed to “is an integer less than” in order to clearly define applicant’s use of “x” and “y” in the claim.

Regarding claim 5, “the access point” (claim 5, line 2) should be changed to either “the current access point” or “the another access point” to clarify which access point the message is sent to.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, claim 4 recites the limitation “the access point operating on said another channel” (lines 5-6 and line 7) in claim 3. There is insufficient antecedent basis for this limitation in the claim. Applicant may overcome this rejection by changing the above-recited limitation either to “the another access point”, or preferably, to “the different access point” if “another access point” (claim 1, lines 4-5) is changed to “a different access point”.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1-5 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent

Application Publication No. US 2003/0036374 by English et al.

Regarding claim 1, English teaches a program product for use by a wireless device (e.g., mobile node 902a, see FIGS. 9 and 10) in a wireless communications environment, the program product comprising a computer readable medium having embodied therein a computer program for storing data (e.g., see paragraph 0168 regarding position calculation, inherently comprising such a program), the computer program comprising: logic for associating with a current access point (e.g., see paragraph 0170, particularly lines 9-17 regarding mobile node 902a associating with one of access points 904a or 904b); logic for ascertaining whether the wireless device should attempt to associate with another access point (e.g., see paragraph 0170, particularly lines 9-17 regarding mobile node 902a makes the decision of which access point 904a or 904b to associate with); and logic for requesting association with the another access point if it is ascertained that the wireless device should attempt to associate with the another access point (e.g., see paragraph 0180 regarding the handoff of communications to a new access point; see also generally paragraphs 0146-0181).

Regarding claim 2, English teaches logic for automatically collecting information about other access points (e.g., see paragraph 0178 regarding mobile node 902 being informed about information regarding access points 904a, 904b and 904c).

Regarding claim 3, English teaches logic for ascertaining that the wireless device should attempt to associate with another access point if the access point is closer than the current access point (e.g., see paragraphs 0170-0180 regarding mobile node 902 determining which access point to associate with based upon proximity to the access points).

Regarding claim 4, English teaches calculating a first biased distance between the wireless device (e.g., mobile node 902) and the current access point based on "x" samples (e.g.,

see paragraphs 0167-0168 and 0175 regarding the impulse radio unit 1016 within mobile node 902 triangulating the current position of the mobile node 902, inherently comprising three or more samples); calculating a second biased distance between the wireless device and the access point operating on a different channel based on “y” samples (e.g., see paragraphs 0175-0180 regarding mobile node 902 estimating such a distance by comparing the current position of the mobile node 902 with a map generated in step 1104 of FIG. 11 which comprises the position of a different access point such as 904b or 904c) where “y” (e.g., known position of mobile node 902 and known position of access point 904b) is less than “x” (e.g., three or more samples for triangulating the current position of mobile node 902); and ascertaining that the access point operating on the different channel is closer than the current access point if the second biased distance is less than the first biased distance (e.g., see paragraphs 0164-0181, particularly paragraphs 0170 and 0175-0180 regarding mobile node 902 determining which access point to associate with).

Regarding claim 5, English teaches sending a message to the access point (e.g., see paragraph 0171 regarding mobile node 902a deciding to associate with a different access point and handing off communications to the different access point after authenticating with the different access point).

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

8. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

9. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-5 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application Nos. 10/780,775; 10/780,804; 10/781,157; 10/781,214; 10/781,121; and 10/781,284. Although the conflicting claims are not identical, they are not patentably distinct from each other because each recite either identical or substantially the same limitations.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### *Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Application Publication No. 2004/0162084 A1 by Wang discloses determining positioning of wireless devices; U.S. Patent No. 6,801,777 to Rusch discloses selecting of wireless devices and channels; and U.S. Patent Application Publication No. US 2005/0117524 A1 by Lee et al. discloses authentication and reassociation of wireless devices according to threshold distances.

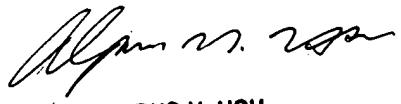
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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Philpott whose telephone number is 571.272.3162. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on 571.272.3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Justin M Philpott



ALPUS H. HSU  
PRIMARY EXAMINER